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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,258	01/06/2004	Andreas Hund	5005.1069	4048
23280	7590	12/13/2005	EXAMINER	
DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018			CONSILVIO, MARK J	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary	Application No. 10/752,258	Applicant(s) HUND ET AL	
	Examiner Mark Consilvio	Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings were received on 9/19/2005. These drawings are acceptable.

Response to Arguments

Applicant's arguments filed 9/19/2005, with respect to the rejection(s) of claim(s) 1-5, 12-17, and 19 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Kitajima et al.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 12-14, and 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Kitajima et al. (US Patent No. 5,543,962) (herein Kitajima).

With respect to claim 1, Kitajima discloses a tube for a microscope, comprising: an adaptation interface (between elements 31 and 32); a rotatably disposed operator interface (38); a beam-deflecting device (33) including a beam-splitting device (S, 33a, 33b); and a rotatably disposed beam deflecting unit (35), a rotation of the operator interface (20a) being constrainedly

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coupled to a rotation of the beam-deflecting unit (35); wherein the beam-deflecting device (33) is configured to deflect, in a direction of the beam-deflecting unit (35), a light beam coming from the adaptation interface (fig. 1).

With respect to claim 2, Kitajima discloses the beam-deflecting device (33) includes a deflecting prism (33a) (fig. 1).

With respect to claim 4, Kitajima shows the beam-splitting device (S, 33a, 33b) includes a Bauernfeind prism (33b) configured to reflect therein twice the light beam coming from the adaptation interface (fig. 1).

With respect to claim 12, Kitajima discloses the operator interface and the beam-deflecting unit (35) are rotatable about a rotation axis (O), the rotation axis (O) being perpendicular to an optical axis of the light beam (fig. 1).

With respect to claim 13, Kitajima discloses, upon a rotation of the operator interface through a first angle, the beam-deflecting unit is configured to rotate through a second angle half as large as the first angle (col. 5, lines 10-18).

With respect to claim 14, Kitajima discloses a lens device (32) disposed between the adaptation interface and the beam-deflecting device (33), the lens device (32) having a positive refractive power.

With respect to claim 19, Kitajima discloses the operator interface (20a) includes a binocular element configured for eyepiece viewing by an operator (fig. 1).

With respect to claim 20, Kitajima discloses the beam-splitting device (S, 33a, 33b) is configured to split-off to a detector (22b) at least a part of the light beam coming from the adaptation interface (fig. 1).

With respect to claim 21, Kitajima discloses the beam-splitting device (S, 33a, 33b) includes an optical component (33a) associated with a Bauernfeind prism (33b), the optical component being configured to split-off to the detector (22b) the at least a part of the light beam coming from the adaptation interface (fig. 1).

With respect to claim 22, Kitajima discloses the optical component (33a) includes a prism attached to the Bauernfeind prism (33b) (fig. 1).

With respect to claim 23, Kitajima discloses the prism is cemented to the Bauernfeind prism (col. 4, lines 31-40).

Claims 1, 2, 12-14, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Baumann et al. (US Patent No. 5,657,158) (herein Baumann).

With respect to claim 1, Baumann discloses a tube for a microscope, comprising: an adaptation interface (5); a rotatably disposed operator interface (12); a beam-deflecting device including a beam-splitting device (F, 1); and a rotatably disposed beam-deflecting unit (2), a rotation of the operator interface being constrainedly coupled to a rotation of the beam-deflecting unit (2); wherein the beam-deflecting device is configured to deflect, in a direction of the beam-deflecting unit (2), a light beam coming from the adaptation interface (fig. 2).

With respect to claim 2, Baumann discloses the beam-splitting device (F, 1) includes a deflecting prism (1) (fig. 1).

With respect to claim 12, Baumann discloses the operator interface and the beam-deflecting unit (2) are rotatable about a rotation axis, the rotation axis being perpendicular to an optical axis of the light beam (fig. 2).

With respect to claim 13, Baumann discloses, upon a rotation of the operator interface (12) through a first angle, the beam-deflecting unit (2) is configured to rotate through a second angle half as large as the first angle (fig. 2).

With respect to claim 14, Baumann discloses a lens device (L2) disposed between the adaptation interface (5) and the beam-deflecting device (1), the lens device (L2) having a positive refractive power (fig. 2).

With respect to claim 19, Baumann discloses the operator interface (12) includes a binocular element configured for eyepiece viewing by an operator (fig. 3).

With respect to claim 20, Baumann discloses the beam-splitting device (F, 1) is configured to split-off to a detector (11) at least a part of the light beam coming from the adaptation interface (fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitajima et al. (US Patent No. 5,543,962) in view of Hayasaka (US Patent No. 5,907,432).

With respect to claims 3-5, Kitajima discloses all the limitations of claims 1 and 2 as stated supra. Further, Kitajima discloses the beam-deflecting device (33) includes a Bauernfeind prism (33b) configured to reflect therein twice the light beam coming from the adaptation

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interface (fig. 1). Though Kitajima does not expressly disclose the further limitations of claims 3 and 5, Hayasaka discloses the deflecting prism (106) is configured to deflect by 90 degrees the light beam coming from an adaptation interface and wherein the Baurnefeind prism is disposed between the deflecting prism and beam-deflecting unit. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to combine the teachings of Hayasaka and Kitajima to provide such features. One of ordinary skill in the art would have been motivated to do this to adjust the positioning of the microscope tube due to height requirements or ergonomic constraints.

With respect to claim 6, Kitajima discloses the beam-splitting device (S, 33a, 33b) includes an optical component (33a) associated with a Bauernfeind prism (33b), the optical component being configured to split-off to the detector (22b) the at least a part of the light beam coming from the adaptation interface (fig. 1).

With respect to claim 7, Kitajima discloses the optical component (33a) includes a prism attached to the Bauernfeind prism (33b) (fig. 1).

With respect to claim 8, Kitajima discloses the prism is cemented to the Bauernfeind prism (col. 4, lines 31-40).

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitajima et al. (US Patent No. 5,543,962) in view of Tandler et al. (US Patent No. 6,008,155) (herein Tandler).

With respect to claims 9-11, Kitajima discloses all the limitations of claim 1 as stated supra. Though Kitajima does not expressly disclose the further limitations of claims 9-11, Tandler teaches that a beam splitter device may be moved into and out of a working position by a

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magazine slider thereby adapting a length of an optical path of the light beam (figs. 2a-2c). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to combine the teachings of Kitajima and Tandler to provide this additional feature to allow an operator to increase the amount of light provided to the operator or detector by selecting/de-selecting the direction of the light beam.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitajima et al. (US Patent No. 5,543,962).

With respect to claim 15, Kitajima discloses all the limitations of claims 1 and 14 as stated supra. Though Kitajima is silent to the lens device (32) being configured to convert a substantially collimated light beam into a converging light beam, such an arrangement is well known in the art. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to provide such a feature since many objective systems provide collimated light and a converging light beam would be necessary to form an image.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitajima et al. (US Patent No. 5,543,962) in view of Sato (US Patent No. 5,519,531).

With respect to claims 16-18, Kitajima discloses all the limitations of claim 1 as stated supra. Also, Kitajima teaches a lens device (38) rotatably disposed between the beam deflecting unit (35) and the operator interface (end of 20), the lens device (38) including a second lens having a positive refractive power (fig. 1). Though Kitajima does not expressly disclose the further limitations of claims 16-18, Sato teaches an assembly is telescopic in a direction of an

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optical axis of a light beam and includes a first lens (112) having a negative refractive power and configured to substantially collimate a light beam, a second positive lens (113), and an operator interface (103) (fig. 8). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to combine the teachings of Kitajima and Sato to allow the assembly of Kitajima to be telescopic as taught by Sato to allow the operator to extend the usable range of the viewer's position making the microscope more ergonomic.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Consilvio whose telephone number is (571) 272-2453. The examiner can normally be reached on Monday thru Friday, 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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